

Criminal
Investigative
Policy &
Oversight



Evaluation of the Department of Defense
Forensic Laboratories

Report Number 9850008X

September 16, 1998

Office of the Inspector General
Department of Defense

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Acronyms

AFOSI	Air Force Office of Special Investigations
ASCLD	American Society of Crime Laboratory Directors
DCIO	Defense Criminal Investigative Organization
DCIS	Defense Criminal Investigative Service
FBI	Federal Bureau of Investigation
FSLIEP	Forensic Science Laboratory Investigative Equipment Panel
NCIS	Naval Criminal Investigative Service
NCISRFL	Naval Criminal Investigative Service Regional Forensic Laboratory
TSWG	Tri-Service Working Group
USACIDC	U.S. Army Criminal Investigation Command
USACIL	U.S. Army Criminal Investigation Laboratory



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

September 16, 1998

MEMORANDUM FOR GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL
MANAGEMENT AND COMPTROLLER)
ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Report on the Evaluation of the Department of Defense Forensic
Laboratories (Report No. 9850008X)

We are providing this evaluation report for review and comment. The evaluation was performed in response to a recommendation in the "Report of the Advisory Board on the Investigative Capability of the Department of Defense," January 1995. We considered management comments on a draft of this report in preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Army responses to Recommendations A.1 and A.2 were not responsive. The Navy response to A.1 was not responsive. We request the Army provide additional comments on Recommendation A.1 and A.2, and the Navy to Recommendation A.1. The Air Force General Counsel generally nonconcurred with Finding B. The General Counsel, Department of Defense, Army General Counsel and Navy General Counsel did not comment on a draft of this report. Therefore, we request comments to the final report by the General Counsel, Department of Defense; Army General Counsel; Navy General Counsel; the Army; and the Navy by November 16, 1998.

We appreciate the courtesies extended to the evaluation staff. Questions on the evaluation should be directed to Dr. Charles McDowell, Evaluation Program Director, at (703) 604-8769 (DSN 664-8769) or Ms. Phyllis Brown, Evaluation Project Manager, at (703) 604-8776 (DSN 664-8776). See Appendix B for the report distribution.

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Criminal Investigative Policy and Oversight

Office of the Inspector General, DoD

Project No. 9850008X

September 16, 1998

Evaluation of the Department of Defense Forensic Laboratories

Executive Summary

Introduction. This evaluation was performed in response to a recommendation contained in the "Report of the Advisory Board on the Investigative Capability of the Department of Defense," January 1995, issued by the Secretary of Defense. Recommendation No. 88 of the study proposed that the Secretary's Board on Investigations determine whether consolidating all DoD forensic support under one integrated laboratory system would result in additional cost efficiencies and enhanced customer support. The evaluation was identified as a project in the Office of the Inspector General Fiscal Year 1997 Annual Plan and was announced April 8, 1997. The on-site evaluation was conducted from July through September 1997. The Army consolidated its forensic laboratories in 1993 and 1996, and the Navy consolidated its laboratories in 1992, resulting in the present arrangement of one Army and two Navy laboratories.

Evaluation Objective. The primary objective was to evaluate whether consolidating forensic laboratories under one integrated system would result in cost efficiencies and enhanced customer support. The evaluation also focused on the efficiency and effectiveness of the DoD forensic laboratories' policies and procedures in support of the criminal investigative mission and on the adequacy of resources needed to perform the forensic laboratory mission.

Evaluation Results. The DoD forensic laboratories, as currently structured, are meeting their mission of providing responsive forensic services to the Defense Criminal Investigative Organizations. The laboratories have demonstrated their effective capabilities to provide forensic services through accreditation by the American Society of Crime Laboratory Directors and highly favorable reports from their customer base. Because we found no deficiencies in the forensic support provided, further consolidation at this time cannot be justified based on the potential for more effective forensic laboratory support to the Defense Criminal Investigative Organizations. However, improvement in laboratory operations are warranted which will allow the accurate assessment of the cost efficiency of services provided. Also, the practice of receiving and providing certain non-Federal laboratory services without reimbursement could potentially violate fiscal statutes and regulatory guidance.

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o The DoD laboratories do not perform cost accounting to determine the cost of forensic examinations for comparison purposes with other crime laboratories. Further, the laboratories lack a uniform method for collecting workload data. As a result, the laboratories are unable to assess the cost-effectiveness of operations in comparison with other crime laboratories (Finding A).

o The Defense Criminal Investigative Organizations request and receive forensic services from non-Federal agencies at no charge in cases in which the non-Federal agency has no interest. In addition, the Navy forensic laboratories provide forensic support to non-Federal law enforcement agencies on a no-fee basis in cases in which the Navy has no interest. These procedures by the Defense Criminal Investigative Organizations could result in violation of fiscal statutes including the Anti-Deficiency Act and DoD directives (Finding B).

Recommendations in this report, if implemented, will improve the overall management of the DoD forensic laboratories.

Summary of Recommendations. We recommend that the Director, U.S. Army Criminal Investigation Laboratory, and the Directors, Naval Criminal Investigative Service Regional Forensic Laboratories, initiate cost accounting of their examinations and establish standard measurements to generate valid and reliable workload statistics. We also recommend that the General Counsel, Department of Defense, and the Service General Counsels review the Defense Criminal Investigative Organizations' policies and procedures for requesting and providing forensic laboratory services to ensure compliance with statutory and regulatory requirements.

Management Comments. The Army and Navy nonconcurred with the recommendation to establish a cost accounting system for their examinations. The Army stated that the unit cost analysis is outside current capabilities of DoD and the Army laboratory. The Navy stated that NCIS does not want to divert laboratory dollars and manpower to do a unit cost analysis study. The Navy concurred with the recommendation to establish standard measurements to accurately define and report forensic workload statistics. The Army nonconcurred with the recommendation stating the DoD laboratories, including Army, do not have a common denominator for comparing units of work.

The Air Force General Counsel generally disagreed with the Finding B which concludes that certain Defense Criminal Investigative Organization practices for providing or reviewing laboratory services from non-Federal agencies could lead to Anti-Deficiency Act violations. The Air Force General Counsel finds no violation of the 31 U.S.C. §1342 provision of the Act which prohibits accepting voluntary services or a violation of any other federal fiscal statute. However, the Air Force General Counsel offered a recommendation that services provided by State and local forensic laboratories be obtained by a written agreement that provides that services rendered are gratuitous with no expectation of future payment. None of the comments address Defense Criminal Investigative Organizations compliance with regulations. We note that our recommendation regarding Finding B is precisely that the Service General Counsels

review laboratory procedures to ensure compliance with regulations. The General Counsel, Department of Defense, Army General Counsel, and the Navy General Counsel did not comment on a draft of this report issued March 11, 1998. See Part I for a discussion of management comments and Part III for the complete text of the management comments.

Evaluation Response. The Army and Navy comments were not fully responsive. We disagree with the Army and Navy's assessment of cost accounting systems for the laboratories. In addition, we believe the Army should reassess the need to establish standard measurements to define and report forensic workload statistics. We request the Army and Navy provide comments on the final report as indicated in Part I. The Air Force General Counsel's recommendation is responsive. However, prior to implementing this procedure for DoD laboratories, we need to review and assess responses to the final report. We request that the General Counsel, Department of Defense, the Army General Counsel, and the Navy General Counsel provide comments on the final report by November 16, 1998.

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Part I - Evaluation Results

Introduction

Forensic Science refers to the systematic application of scientific techniques and methods in support of criminal investigations. Forensic science, as an adjunct to criminal investigations, grew out of several loosely related events during the last century, including the development of the science of organic chemistry; the use of photography to record crime scenes and identify suspects; advances in the scientific use of the microscope; and the development of pathology as a medical specialty. Because forensic science rests on (but is not limited to) baseline technical expertise in such academic disciplines as chemistry, physics, medicine, anthropology, and toxicology, its practitioners have historically supported the criminal justice system through the operation of specialized and largely autonomous "crime labs" rather than as organic components of law enforcement agencies.

There are several Federal crime laboratories, and most states have their own. However, only the larger municipalities can afford to staff and operate their own crime laboratories. As a result, local law enforcement agencies commonly use forensic laboratory resources made available to them at no cost by Federal or State agencies. The Federal Bureau of Investigation (FBI) operates one of the nation's best-known crime laboratories, which opened in 1932. The FBI laboratory serves not only FBI forensic needs but also those of local law enforcement agencies that do not have or cannot afford crime laboratories. Another example is the Bureau of Alcohol, Tobacco, and Firearms, which maintains a laboratory that is staffed and equipped to support investigations involving fires, explosions, and firearms.

In addition, specialized State and local medico-legal institutions (such as medical examiner offices) utilize forensic specialties that support unique requirements. For example, a medical examiner's laboratory will have specialized toxicology resources for the analysis of body fluids and tissues and to screen for drugs and poisons.¹

The War Department established the first military forensic science laboratory in October 1943 as the Scientific Investigations Branch of the Provost Marshal's

¹ The DCIOs routinely incorporate the results of forensic examinations conducted by State and local medical examiner offices into their reports of investigation in cases involving the death of military members.

Office (12th U.S. Army Group). Thereafter, the Army established two other crime laboratories. In 1987, the U.S. Army Criminal Investigation Command (USACIDC) unified all three laboratories under a single command: the United States Army Criminal Investigations Laboratory (USACIL), which operated under the motto *Justitia Per Scientia* (Justice Through Science). In 1981, the Naval Criminal Investigative Service established four regional drug identification laboratories to provide a quick-response capability to the military drug abuse problem. To meet the Naval Criminal Investigative Service forensic science requirements, these laboratories expanded into other forensic areas during the early and mid-1980s. Presently, the Army operates a single laboratory while the Navy operates two laboratories. The Air Force and U.S. Marine Corps do not operate forensic laboratories. The Air Force uses Army, Navy, and other Federal, State and local government and the Marine Corps predominantly uses the Navy and Army laboratories.

Virtually all law enforcement and criminal investigative agencies depend on crime laboratories and consider them an indispensable component of the criminal justice system. The division of labor between law enforcement agencies and crime labs is interdependent and dynamic. Normally, a law enforcement or investigative agency is responsible for identifying items of potential evidentiary value, collecting it, and submitting it to the crime laboratory with specific requests for the examinations desired. The crime laboratory then performs the examinations, provides the results, returns the evidence and, if requested, offers expert testimony at a subsequent trial. In rare cases, crime laboratory personnel will assist in crime scene processing.

Military law enforcement and criminal investigative agencies are major consumers of forensic laboratory services. The Army and Navy provide the services internally, and additional services may be obtained externally from the FBI and other Federal laboratories. In some cases, military investigators utilize civilian crime laboratories at both the State and local levels. When circumstances require doing so, investigators also use private forensic laboratories on a fee-for-service basis.

Reason for Evaluation

This evaluation was performed in response to a recommendation in the "Report of the Advisory Board on the Investigative Capability of the Department of Defense," January 1995. Recommendation No. 88 in that report proposed: "... that the

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Secretary's Board on Investigations study whether consolidating all DoD Forensic support under one integrated laboratory system would result in additional cost efficiencies and enhanced customer support."

Army Forensic Services. In FY 1997, the Army Criminal Investigation Laboratory (USACIL) at Fort Gillem was authorized 13 military and 76 civilian positions and had an operating budget of \$4.9 million. USACIL provides forensic support in the disciplines of questioned documents, trace evidence, firearms and tool marks, latent prints, imaging and technical services, drug chemistry, and serology. About 25 percent of USACIL forensic efforts support investigations conducted by the Navy, Air Force, and Marine Corps; about 75 percent support Army criminal investigations.

Navy Forensic Services. The Naval Criminal Investigative Service (NCIS) operates two limited-service forensic laboratories designated Naval Criminal Investigative Service Regional Forensic Laboratories (NCISRFLs). One NCISRFL is in Norfolk, Virginia, and the other is in San Diego, California. The NCISRFL Norfolk is authorized 13 civilian positions and had a FY 1997 operating budget of \$597,317. The NCISRFL San Diego is authorized ten civilian positions and had a FY 1997 operating budget of \$621,519. Forensic support at both NCISRFLs is provided in the disciplines of latent prints, drug chemistry, arson, and questioned documents. The two NCISRFLs provide about 80 to 85 percent of forensic services required by NCIS. NCIS receives the remainder of needed support from USACIL and other forensic laboratories. About 15 to 20 percent of NCISRFL efforts support agencies other than NCIS. Under a memorandum of agreement signed by the Services, the NCISRFL Norfolk provides military working dog training support to the Department of the Navy and to all other DoD agencies. In providing this support, NCISRFL technicians prepare training aids containing controlled substances; maintain inventory logs, custody documents, procurement forms for the controlled substances; serialize the drug training aids; and destroy the training aids at two year intervals.

Air Force Forensic Services. The Air Force Office of Special Investigations (AFOSI) has no forensic laboratory facilities. The Air Force operates a computer laboratory to provide analysis of computer based evidence. The work being done by the Air Force is not in competition with or duplicative of forensic work at the Army or Navy laboratories. This area was not reviewed because it was considered outside the scope of the evaluation. The AFOSI uses Army, Navy, and other Federal, State and local government laboratories, in addition to limited contract support. Support from State and local laboratories is normally provided free of charge.

Additional Services. DoD forensic laboratory personnel provide expert testimony on cases in which they have conducted examinations. They also instruct legal personnel on the value and significance of forensic laboratory examinations. When asked, laboratory examiners will also serve as on-site advisors to field investigators at major crime scenes.

Consolidation History

In 1990, as a result of a Defense Management Review, the Military Criminal Investigative Organizations agreed to work together to find ways to economize without total consolidation of the DoD laboratories. A Tri-Service Working Group (TSWG) with 11 supporting panels was established to study specific functional areas and to identify potential economies. The Forensic Science Laboratory Investigative Equipment Panel (FSLIEP) was one of the supporting panels. The FSLIEP was tasked to identify the economies and enhanced responsiveness that would accrue from a consolidation of the DoD laboratories. In 1990, the Navy had laboratories in Norfolk, VA; San Diego, CA; and at Pearl Harbor, Hawaii. The Army had laboratories in Europe, Japan, and the United States. On March 27, 1991, the FSLIEP presented a staff study to the TSWG identifying the following four options to the Tri-Service Working Group:

- (1) Continue the current infrastructure (three Army full-service laboratories: two overseas and one in the United States; and three Navy limited-service laboratories: two in the United States and one overseas).
- (2) Adopt an infrastructure consisting of one Army full-service laboratory and two Navy limited-service laboratories, all located in the United States.
- (3) Consolidate the NCIS and USACIDC laboratory assets and place them under control of USACIDC with two full-service laboratories in the United States (one on each coast).
- (4) Consolidate the NCIS regional laboratories and the USACIL under control of USACIDC with one full-service laboratory in the United States.

The TSWG did not support any of the FSLIEP options because of what it identified as excessive up-front costs and because the NCIS did not agree with a consolidation of resources. The Panel was then tasked to study the proposal of a single (USACIDC) full-service laboratory with limited service satellites and to

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explore the feasibility of establishing USACIDC as the Executive Agency for DoD forensic laboratory support. Although a consensus could not be reached, the FSLIEP provided TSWG with information and statistical data.

USACIL Consolidation. The general drawdown within the Department of Defense following the Cold War resulted in USACIL downsizing and restructuring its laboratories. In FY 1993, USACIL-Pacific was closed. In FY 1996, USACIL-Europe was closed, and all operations were consolidated with the USACIL, Ft. Gillem. In addition, a civilianization plan and a program to reduce the ratio of support to technical personnel were implemented in FY 1995. A manpower review by the U.S. Army Force Investigation Support Agency in 1995 validated the restructuring of the USACIL.

NCISRFL Consolidation. In 1981, the Chief of Naval Operations directed the NCIS to establish Navy drug identification laboratories. The laboratories were located in Norfolk; San Diego; Honolulu; and Naples, Italy. The NCIS laboratories expanded into other forensic areas during the early and mid-1980s to meet the NCIS growing need for additional forensic services. In an effort to downsize and economize, NCIS closed the Naples forensic laboratory in December 1985. In July 1992, the Honolulu laboratory was closed and consolidated with the NCISRFL San Diego.

Evaluation Objective

The primary objective of this evaluation was to assess whether consolidating DoD investigative forensic laboratories under one integrated laboratory system would result in cost efficiencies and enhanced customer support, as discussed in the 1995 "Report of the Advisory Board on the Investigative Capability of the Department of Defense," issued by the Office of the Secretary of Defense. The evaluation also focused on the efficiency and effectiveness of the DoD forensic laboratories' policies and procedures in support of the criminal investigative mission and on the adequacy of resources needed to perform the forensic laboratory mission. Appendix A discusses the evaluation scope and methodology.

Evaluation Results

The DoD forensic laboratories are meeting their mission of providing forensic services to the Defense Criminal Investigative Organizations (DCIOs). The U.S. Army Criminal Investigation Laboratory (USACIL) and the Navy Criminal Investigative Service Regional Forensic Laboratories (NCISRFLs) Norfolk and San Diego are accredited by the American Society of Crime Laboratory Directors (ASCLD). The laboratories provide responsive forensic examinations that support DoD investigative and law enforcement efforts and thereby contribute to their success. Investigators from the DCIOs and legal personnel who receive services from the laboratories were universally impressed with the forensic services they received.

Background

ASCLD Accreditation Program. The Crime Laboratory Accreditation Program of the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) is a voluntary program in which crime laboratories may demonstrate that their management, operations, personnel, procedures, instruments, physical plant, security, and personnel safety procedures meet certain objective standards. The objectives of ASCLD are to:

- o improve the quality of laboratory services provided to the criminal justice system;
- o offer to the general public and to users of laboratory services a means of identifying throughout the nation those laboratory facilities that satisfy accreditation criteria;
- o develop and maintain criteria that a laboratory can use to assess its level of performance and to strengthen its operations; and
- o provide an independent, impartial, and objective system by which laboratory facilities can benefit from a total organizational review.

Evaluation Results

The accreditation program is based on a self-assessment, application for accreditation, and an on-site inspection by trained ASCLD/LAB inspectors. After receiving accreditation, renewal is required every five years, during which annual self-inspections are required.

The USACIL received its first ASCLD/LAB accreditation in 1985 and passed its third accreditation in 1996. NCISRFL Norfolk received accreditation in 1992 and its second accreditation in 1997. The NCISRFL San Diego received its first accreditation in April 1998.

Management of Laboratories

Overall, the laboratories are generally well managed, and adequate mechanisms are in place to provide forensic services to the DCIOs. A high standard of laboratory procedure is maintained by using and meeting the ASCLD standards. The laboratories perform self-proficiency tests to meet ASCLD standards and to ensure that appropriate, valid, and reliable forensic examinations are performed in accordance with generally accepted scientific principles and procedures. Further, the laboratories have oversight mechanisms in place to monitor case loads, safety, and security. However, the laboratories can implement improvements to better evaluate and plan for future operations (see Finding A).

Prioritizing Laboratory Requirements. The laboratories have developed procedures for prioritizing and managing their caseloads. Work is accounted for and assigned to examiners on a first-come, first-served basis (unless more expeditious handling is requested and justified). Supplemental prioritization is used when necessary. For example, cases with trial dates scheduled or in which the subject is due for transfer, separation, or reenlistment, are prioritized to meet those dates. This approach seems to work for the laboratories on a day-to-day basis because it allows for the needed flexibility to respond to both urgent and routine needs in an orderly fashion. Each laboratory maintains and reports statistical data to higher echelons. The laboratories maintain and use workload data to analyze and measure their workload. Turnaround on examinations varies in accordance with the complexity of the work. The NCISRFL's average completion time for all disciplines combined is from 14 to 28 days, while quarterly statistical summaries for FY 1996 provided by USACIL indicate an average time of 47 days for its disciplines. The difference in turn around between the

laboratories can also be contributed to the two Services having different methodologies for calculating their samples and processing time.

Laboratory Services. The USACIL provides full-service forensic laboratory services to a diverse and widely dispersed customer base. In addition to support for the Army, about 25 percent of the USACIL workload supports other DoD and Federal agencies. In 1981, the NCIS laboratories were established essentially as drug identification laboratories. At the time the laboratories were established, the Navy cited problems in receiving on a timely basis the results of examinations conducted at USACIL. Delays were attributed to personnel shortages and heavy caseloads at the Army laboratories. The NCISRFLs currently locate their forensic services in two areas densely populated with Navy personnel, Norfolk and San Diego. The forensic services provided by these two laboratories are limited to latent prints, drug chemistry, arson, and questioned documents. The two limited-service laboratories meet 80 percent of the Navy's forensic services requirements.

In addition to performing scientific examinations, DoD forensic laboratory specialists also provide expert testimony in trials. USACIL examiners made 88 court appearances in FY 1996. NCISRFL Norfolk examiners made 10 court appearances in FY 1996, and the San Diego NCISRFL made 19. Successful forensic examinations also reduce the need for trials. Many subjects plead guilty rather than face the weight of forensic findings in court. Our discussions with laboratory directors indicated that, when requested, examiners also assist field agents in processing crime scenes. The NCISRFLs are able to provide this kind of assistance more often than their USACIL counterparts because of their close proximity to large Navy populations.

Additional NCISRFL Support. The NCISRFLs provide additional support in the following two areas.

- o Under a memorandum of agreement with the Services, the NCISRFL Norfolk is responsible for assisting the military working dog program. The overall cost of this program to the DoD is reduced, in part, because the equipment and supplies required by the program are provided by the drug chemistry section of the forensic laboratory.

- o Collocated with each NCISRFL is a Consolidated Evidence Facility that serves not only the NCISRFL but also the local NCIS resident agencies by storing, transferring, and disposing of evidence. This consolidation of evidence facilities

Evaluation Results

eliminates the necessity for seven field locations having to operate and staff their own evidence facilities.

Customer Responses. Before starting the evaluation, we sent approximately 700 questionnaires to the DCIOs headquarters and field offices regarding their use of and satisfaction with the forensic laboratory services. We received an average return rate of 48 percent (DCIS 61 percent; USACIDC 38 percent; NCIS 29 percent; AFOSI 96 percent; and Marine Corps Criminal Investigation Division 44 percent). The responses showed that customers were pleased with the quality of examinations and the extent of the services they received from the laboratories. The only area in which customers identified a need for improvement was in timeliness of responses. Our discussions with the laboratories' directors showed that mechanisms are in place to handle priority cases. Our field visits to the DCIOs and discussions with legal officers verified that laboratory results have accommodated court dates. Examples of favorable comments received from the survey and field visits included the following.

Extremely Professional - Asks and meets our needs and deadlines.

Response time, convenience to geographic area, excellent service.

If our office has a priority case the lab does everything possible to put the case high on their priority use. Our office has a wonderful working relationship with the lab and they stress that if we every want to discuss a case that we call.

... examiners have always taken the time to assist my investigations in any way they could; have taken the time to explain difficult technical examinations; and have been able (in court) to explain technical matters to the court in ways the members (jury) could easily understand and use in their decision process.

Quality of Army lab product and availability of Expert Testimony are unsurpassed. Lab examiners always helpful when called on the telephone/e-mailed for guidance.

In addition, our discussions with agents, judge advocates, and military judges confirmed that laboratory expert witnesses were readily available; and that the performance of expert witnesses at trials was usually excellent. When questioned about the timeliness of laboratory results, most stated that they would like to have results sooner; however, in the last two years significant improvement has been made by the laboratories in this area. The DoD laboratories received high praise in providing training to judge advocates and DCIO personnel during the off-time they

had while they were present to testify in trials. Further, the DoD laboratories were also commended for being much more efficient in maintaining chain-of-custody of evidence than outside laboratories.

Conclusion. It is relevant to consider the effectiveness of the existing DoD laboratory system when evaluating the feasibility of consolidation. Our questionnaire and field visits confirmed a high degree of customer satisfaction with the laboratory services received. The evaluation identified no basis for greater user satisfaction as a result of consolidation of the laboratories. We believe that further consolidation at this time would not contribute to more effective forensic laboratory service to the DCIOs, and based on the limited cost-analysis data available, we doubt that consolidation would result in economies of scale. The downsizing and consolidations within USACIL and NCISRFLs since 1993 have already had the net effect of consolidating both laboratories (although not on a single-service basis), and further consolidation at this time is not warranted. The present geographic structure of the Army full-service forensic laboratory at Fort Gillem and the Navy's two limited-service laboratories at Norfolk and San Diego represents a responsive and efficient distribution of DoD forensic laboratory resources. In addition, the military working dog program and the consolidated evidence facilities at the NCISRFLs contribute to efficiencies associated with those laboratories. In summary, the DoD forensic laboratories, as currently deployed, provide effective forensic services to their military investigative and law enforcement customers.

Management Comments. The Army disagreed with the draft report and provided the following comments. The complete text of management's comments is in Part III.

The Army commented that one of the objectives of the evaluation was to evaluate the "adequacy of resources needed to perform the forensic laboratory mission" and that the draft report did not direct any comments on resources.

The Army requested that trace evidence should be added to U.S. Criminal Investigation Laboratory USACIL disciplines and that the last sentence under **Army Forensic Services**, on page 4 of the draft report should read "...about 75 percent support Army criminal investigations" as opposed to "...about 75 percent support USACIDC criminal investigations." The Army also stated that USACIL is not a full service laboratory as described in the report, since it does not perform toxicology.

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The Army recommended that we clarify the Army average turn around time for examinations of 47 days to reflect that Army takes into account time-consuming disciplines such as DNA testing and have different methodologies for calculating their samples and processing time as opposed to the Navy, which cited an average completion time between 14 and 28 days for examinations. The Army pointed out that on page 15 of the draft report the Army statistics of 3,134 cases opened are for FY 1996 as opposed to FY 1995.

The Army further stated that the evaluation should continue. The Army recommended that the evaluation include both the Air Force's computer forensic laboratory initiative with existing USACIDC computer crime capability.

Evaluation Response. We consider the Army comments to be partially responsive and provide the following:

- o Page 13 of the draft report addressed resources at USACIL and NCISRFLs. The evaluation determined that resources at the laboratories were adequate to perform their missions. The evaluation included a review of staffing levels, equipment, and funding. Our review and conversations with program managers did not reveal any resource issues that indicated the laboratories were unable or were not performing an adequate mission. However, Finding A of the draft report identifies that the laboratories are unable to assess the cost effectiveness of their operations in comparison with other crime laboratories, and they lack information upon which they can base their plans for future budget and operational decisions. See Finding A, page 15.

- o We have revised the report to include trace evidence as a USACIL discipline. We also changed the sentence on Page 4 of the draft report to read "...about 75 percent support Army criminal investigations." In addition, the report now describes the USACIL as "offering the widest range of forensic services of any accredited Federal laboratory" as opposed to a "full service laboratory."

- o Page 9 of the draft report stated that turnaround on examinations varies in accordance with the complexity of the work. We have further clarified the average turn around time for examinations by adding that the Army and Navy have different methodologies for calculating their samples and processing time.

- o Appendix A, Evaluation Process, of the draft report identified limitations to the evaluation scope. The joint DoD Computer Forensic Laboratory was identified as not being included in the report because a review of the laboratory

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would be included in a evaluation of the "Defense Investigative Organization Programs for Investigating Computer Crime (Project No. 70G-9022)." On February 10, 1998, the Deputy Secretary of Defense authorized the Air Force to establish a joint DoD Computer Forensic Laboratory and Training Program. On May 26, 1998, the Office of the Inspector General issued a draft report on Project No. 70G-9022 that described the Defense Criminal Investigative Organization programs for investigating computer crimes. Included was a description of the joint DoD Computer Forensic Laboratory. The evaluation did not review any consolidation issues.

We request that the Army provide comments to the final report.

Finding A. Assessing Cost-Effectiveness of DoD Forensic Laboratories

The DoD forensic laboratory directors do not perform cost accounting to determine the cost of forensic examinations. In addition, DoD laboratories are not uniform in the methods they use for collecting workload data. These conditions exist because the laboratories do not maintain unit cost information at the examination level and because the laboratory directors have not established a uniform method for collecting data. As a result, the laboratories are unable to assess the cost-effectiveness of their operations in comparison with other crime laboratories, and they lack information upon which they can base their plans for future budget and operational decisions.

Background

Resources at USACIL and the NCISRFLs, as they are currently defined, are adequate to perform their respective missions. Laboratory directors have identified the staffing, funding, and equipment required to support the laboratories and have mechanisms in place to prioritize and monitor the resources they receive. However, laboratory directors lack information necessary for planning for future operations.

Cost of Examination By Discipline

USACIDC Review. In 1994, USACIDC conducted a "Review of Potential to Contract USACIL Examination Workload." The review was conducted by the

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USACIDC Internal Review Office to determine if any Federal, State, or commercial crime laboratories could handle some or all of the USACIL workload on a contractual basis. In addition, the review sought to determine the cost of processing examinations by discipline so it could conduct a cost comparison with data from other crime laboratories. USACIL performed a macro cost analysis to show what it costs to perform examinations. The macro cost analysis used basic operating costs: USACIL overhead (total cost of the USACIL headquarters apportioned to each laboratory), laboratory overhead, and laboratory operations. Using FY 1992 budget information, analysis was conducted on USACILs three existing laboratories. The review showed that management did not look at controlling cost at the examination level, but focused instead on a percentage reduction basis of the overall budget. USACIDC was unable to conduct a cost comparison with other forensic laboratories because they did not receive sufficient cost data or descriptions of services available from the Federal, State, or commercial laboratories they contacted. The USACIDC review concluded that contracting out for Army forensic laboratory services was not feasible.

NCIS Review. The NCIS stated that it does not perform cost accounting on examinations by discipline, and that costs of examinations cannot realistically be compared with one another because of different levels of complexity. In 1996, NCIS conducted a study on the feasibility and cost effectiveness of contracting out for forensic laboratory services. NCIS looked at the annual operating costs of their laboratories based on personnel cost and determined that the average hourly cost to NCIS equaled \$34 per hour. Using this figure, NCIS compared it with six private laboratories. The private laboratories charged from \$100 to \$250 per hour. Based on this and other factors (NCIS not being able to determine outsourced laboratory priorities; timeliness; quality control over the work; evidence handling procedures and storage; the absence of a full-service forensic contract laboratory; and the lack of capability for providing the military working dog drug support to the DoD Services) NCIS concluded that contracting out was not feasible and that it would not be cost effective.

Cost Effectiveness of Laboratory Examinations. Both the USACIL and the NCISRFLs have the capability to provide summary cost information by each forensic discipline based on their overall operating costs. However, without a method to determine cost at the examination level, the laboratories cannot assess the cost-effectiveness of their operations or measure the efficiency of the DoD laboratories in comparison with contract forensic laboratories. Knowing the cost of doing business at the examination level might enable laboratory directors to

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make greater improvements in the efficiency and effectiveness of their respective laboratories in the areas of equipment and other resources.

Inconsistent Workload Statistics

Workload and Productivity Reports. Workload and productivity data by fiscal year are available from monthly and annual reports by both USACIL and the NCISRFLs. The reports are provided to USACIDC and NCIS and are used to measure and assess workload performance. The USACIL and NCISRFL differ in how they count their workloads. The USACIL and the NCISRFL use automated systems to log in and track evidence received into their laboratories. Laboratory directors confirmed that established procedures were in place to assign control numbers and to account for material received. However, the laboratories differ in how they count the material they receive. The USACIL assigns a number to each new incoming case, and for additional or repeat evidence received on the same case, their automated system automatically identifies the original case number and follows it with a suffix. For example, a case is received on February 18, 1997, and is assigned Case Number 97-0324. On March 2 and 24, 1997, additional evidence is received. The additional evidence is automatically identified as 97-0324-A1 and 97-034-A2, respectively. For statistical reporting purposes, USACIL counts this as one case. The NCISRFLs, on the other hand, assign a new number to each piece of evidence as it is received. For FY 1995, the NCISRFLs Norfolk and San Diego reported 2,269 total cases opened. The USACIL reported 3,134 cases for FY 1996. However, the inconsistency in how the two DoD laboratories count their workload precludes a workload comparison between them. In addition, the lack of comparable data makes it difficult for any future analysis or assessments of forensic support within the DoD.

Summary

The absence of cost data at the examination level precludes the DoD laboratories from being able to assess the cost-effectiveness of their operations and prevents them from being able to determine the overall efficiency of operating their

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respective laboratories in comparison with other crime laboratories. In addition, the USACIL and the NCISRFLs should establish standard workload measurement criteria to account for the amount of forensic services they provide, and they should accurately define and report forensic workload in a consistent manner. In implementing these improvements, the laboratories can determine their efficiency, their ability to meet or exceed forensic competition, and can potentially improve performance.

Recommendations, Management Comments, and Evaluation Response

A.1. We recommend that the Director, U.S. Army Criminal Investigation Laboratory, and the Directors, Naval Criminal Investigative Service Regional Forensic Laboratories, establish a cost accounting system for their examinations.

Army Comments. The Army nonconcurred with the recommendation and stated that the unit cost analysis is outside current capabilities of DoD and USACIL. They further stated that there are no funds to support the recommendation and estimated that \$100,000 would be required in the first year to set up a cost accounting system. The Army recommended DoD not direct laboratories to perform cost analysis until proper funding is provided.

Navy Comments. The Navy nonconcurred with the recommendation and stated that NCIS does not want to divert laboratory dollars and manpower to do a unit cost analysis study. NCIS also expressed reservations about the ability of a cost accounting system to judge with any degree of certainty how efficient the RFLs are compared to other crime laboratories. NCIS stated that other forensic laboratories' mission and focus are different compared to the RFLs. The RFLs primary responsibility is to serve the criminal investigative needs of the Department of Navy which has a worldwide presence with its unique requirements. Finally, NCIS states that the draft report's statement that crime laboratories "lack information upon which they can base their plans for future budget and operational decisions" is that NCIS headquarters regularly monitors RFL dollars and manpower requirements. The NCIS Executive Resource Board has consistently approved additional staff and backfill of current vacancies because the RFLs have provided sufficient justification, such as unmanageable case backlog and

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unacceptably long turnaround times. Replacement of lab instruments and major items of equipment is monitored and programmed to coincide with the end of an instrument's anticipated useful life cycle.

Evaluation Response. The requirement for managerial cost accounting on a regular and consistent basis supports legislative actions. The Chief Financial Officers Act (CFO) of 1990 states that agency CFOs shall provide for the development and reporting of cost information and the periodic measurement of performance. In addition, the Government Performance and Results Act of 1993 requires each agency, for each program, to establish performance indicators and measure or assess relevant outputs, service levels, and outcomes of each program as a basis for comparing actual results with established goals. We believe measuring costs is an integral part of measuring performance in terms of efficiency and cost-effectiveness. Efficiency is measured by relating outputs to inputs. It is often expressed by the cost per unit of output. While effectiveness in itself is measured by the outcome or the degree to which a predetermined objective is met, it is commonly combined with cost information to show "cost-effectiveness." Although the Army and the Navy both cited cost as a factor for not setting up cost accounting systems, it is not required that the laboratories possess sophisticated cost accounting systems. Using cost finding techniques or methods, the laboratories should be able to perform a minimum level of determining the cost of providing forensic services within each discipline. With appropriate cost information, managers can compare the amount of resources used to provide services, compare cost changes over time and identify their causes, identify and reduce excess capacity costs and compare costs of similar activities and find causes for cost differences, if any.

A.2. We recommend that the Director, U.S. Army Criminal Investigation Laboratory, and the Directors, Naval Criminal Investigative Service Regional Forensic Laboratories, establish standard measurements to accurately define and report forensic workload statistics.

Army Comments. The Army stated the DoD laboratories, including the USACIL, do not have a common denominator for comparing units of work.

Navy Comments. The Navy concurred with the recommendation, stating crime laboratory cases could be counted in the manner recently developed and prescribed by the American Society of Crime Laboratory Directors. The National Institute of Standards and Technology, Office of Law Enforcement Standards, provided funding from the National Institute of Justice to assist the ASCLD in developing a

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professional survey tool that would measure workload, backlog, and output of crime laboratories in a consistent and standardized manner.

Evaluation Response. The Navy comments are responsive. We agree with the Navy position and believe that standardization of the way DoD crime laboratory cases are counted and workload data is reported is achievable using the ASCLD method. As members of ASCLD, the DoD laboratories should endorse the methods suggested by ASCLD and thereby establish a standard workload measurement criteria to account for the amount of forensic services they provide and a consistency in reporting workload data.

The Army comment is not responsive. We request the Army reconsider its position on the recommendation and provide additional comments in its response to the final report.

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Defense Criminal Investigative Organizations (DCIOs) currently request and receive forensic services from non-Federal agencies at no charge. In addition, the Navy forensic laboratories provide forensic support to non-Federal law enforcement agencies on a no-fee basis. The DCIOs use civilian laboratories through policy direction and as a matter of convenience and timeliness. Existing DCIO policies and procedures for providing and receiving services do not require reimbursement and could lead to violations of fiscal statutes and/or regulatory directives.

Background

Currently, Defense Criminal Investigative Organizations request and receive forensic services from State and local agencies at no charge in a number of cases. In addition, the Navy forensic laboratories provide forensic support to non-Federal law enforcement agencies on a no-fee basis. These practices and the policies and guidance upon which they are based could lead to violations of fiscal statutes and/or regulatory directives. Specifically and most significantly, the provisions of the Anti-Deficiency Act set out in Title 31, United States Code, could be implicated.

31 U.S.C. §1341. Limitations on expending and obligating amounts states:

(a)(1) An officer or employee of the United States Government or of the District of Columbia government may not—

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; or

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(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.

(2) This subsection does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government.

(b) An article to be used by an executive department in the District of Columbia that could be bought out of an appropriation made to a regular contingent fund of the department may not be bought out of another amount available for obligation.

31 U.S.C. §1342. Limitation on voluntary services states:

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.

31 U.S.C. §1301. Application states:

(a) Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

(b) The reappropriation and diversion of the unexpended balance of an appropriation for a purpose other than that for which the appropriation originally was made shall be construed and accounted for as a new appropriation. The unexpended balance shall be reduced by the amount to be diverted.

(c) An appropriation in a regular, annual appropriation law may be construed to be permanent or available continuously only if the appropriation-

(1) is for rivers and harbors, lighthouses, public buildings, or the pay of the Navy and Marine Corps;

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(2) expressly provides that it is available after the fiscal year covered by the law in which it appears.

(d) A law may be construed to make an appropriation out of the Treasury or to authorize making a contract for the payment of money in excess of an appropriation only if the law specifically states that an appropriation is made or that such a contract may be made.

Type of Jurisdiction. The authority to investigate and prosecute a violation of law and hence to provide forensic laboratory support can depend on a number of factors. For example, when a crime has been committed on a military installation, it is necessary to determine what type of jurisdiction applies to that particular tract of land. In this regard, there are three categories of jurisdiction: exclusive Federal jurisdiction; concurrent jurisdiction; and partial jurisdiction. If a crime is committed on land that is subject to either concurrent jurisdiction or partial jurisdiction, both the State and the military may have a legitimate interest in the investigation and prosecution. In that situation, assistance provided by the State to the military or the military to the State should be viewed as normal cooperation between the State law enforcement agencies and the military. Similarly, criminal conduct by a Service member committed off the installation could fall under military jurisdiction which extends to the person of the Service member and could also implicate State or local jurisdiction because of the location of the conduct. A crime committed by a Service member in an area under exclusive jurisdiction would be the sole responsibility of Federal authorities and would not accord any State or local investigative or prosecutive authority. It is, therefore, important to review forensic services support in light of the specific employment of DoD policies relative to jurisdiction in order to determine whether or not the provisions of Anti-Deficiency Act apply.

Voluntary and Gratuitous Services. The Anti-Deficiency Act was intended to keep an agency's level of operations within amounts appropriated for that purpose. Normally, obtaining funds or services from other sources is considered to be an improper augmentation of an appropriation. The unrestricted ability to use voluntary services would permit circumvention of the Act's objective. However, the General Accounting Office and the Department of Justice draw a distinction between "voluntary services" and "gratuitous services." In 1920, the Comptroller of the Treasury stated: "[The statute] was intended to guard against claims for compensation. A service offered clearly and distinctly as gratuitous with a proper record of that fact does not violate this statute against acceptance of voluntary service." In 1982, the Justice Department's Office of Legal Counsel wrote, "Although the interpretation of [section 1342] has not been entirely consistent over

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the years, the weight of authority does support the view that the section was intended to eliminate subsequent claims against the United States for compensation of the 'volunteer,' rather than to deprive the government of the benefit of truly gratuitous services." It is consistently recommended that the government and the volunteer have a clear written agreement that the services are to be rendered gratuitously with no expectation of future payment.

Compliance with Statute. As with the application of Section 1342, procedures and practices must be carefully examined to ascertain compliance with 31 U.S.C. §1341 and 31 U.S.C. §1301. Not every violation of 31 U.S.C. §1301(a) also constitutes a violation of the Anti-Deficiency Act. Where, however, no other funds were authorized to be used for the purpose in question, both 31 U.S.C. §1301(a) and §1341(a) have been violated. When Congress has not appropriated funds for the designated purpose, the obligation may be viewed either as being in excess of the amount (zero) available for that purpose or as in advance of appropriations made for that purpose. In either case, the Anti-Deficiency Act is violated. Section 1301 provides that, "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by Law." The basic tenet of appropriation law is that appropriated funds may only be used for the purposes for which appropriated, but this does not mean that an agency may incur only those expenses specified explicitly in an appropriation. To so require would clearly be impractical given the varying levels of generality in the legislative language that Congress uses to provide funding for various agency programs and activities.

DoD Reporting. DoD Directive 5525.5, "DoD Cooperation with Civilian Law Enforcement Officials," January 15, 1986, paragraph D., states: "It is DoD policy to cooperate with civilian law enforcement officials to the extent practical." Paragraph F. states: "A quarterly report of all requests for assistance (approved, denied, or pending) shall be submitted by the Secretaries of the Military Departments and the Directors of Defense Agencies to the ASD(FM&P), the General Counsel, the ASD(HA), and the ASD(RA), not later than 30 days after the end of each quarter." If forensic laboratory support is provided to State and local law enforcement officials at no cost, these expenditures would seem to require reporting in the quarterly report of requests for assistance. Enclosure 3 of the Directive further provides, "Military Departments and Defense Agencies may make equipment, base facilities, or research facilities available to Federal, State, or local civilian law enforcement officials for law enforcement purposes in accordance with this enclosure." However, Enclosure 5 of the Directive states, "As a general

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matter, reimbursement is required when equipment or services are provided to agencies outside the Department of Defense." It also provides that if the reimbursement is not required by law for a particular form of assistance, the authority to waive reimbursement is delegated to the ASD(FM&P) and that authority can be delegated to the secretaries of the Military Departments and the Directors of the Defense Agencies.

DCIOs Policies for Using Forensic Laboratories

Defense Criminal Investigative Service. The Defense Criminal Investigative Service (DCIS) Agent Manual, "Operations," (chapter 18, draft January 1995), establishes policy and procedures for using forensic laboratories. Paragraph 1814. states:

The DCIS SAs are encouraged to utilize crime laboratories when appropriate. Laboratory support is available from a number of Federal, state and local agencies offering a full range of forensic examinations of evidentiary material. Among those agencies supporting DCIS are the U.S. Army Criminal Investigative Laboratory System, FBI, U.S. Postal Service, Bureau of Alcohol, Tobacco and Firearms, plus numerous state and local law enforcement laboratories.

U.S. Army Criminal Investigation Command. USACIDC Regulation 195-1, "Criminal Investigation Operational Procedures," October 1, 1994, chapter 24, establishes USACIDC policies and procedures for submission of forensic evidence to the USACIL laboratory. Regulation 195-1 requires that forensic laboratory examinations be obtained from the USACIL, unless prior approval is obtained from the Commander, USACIL.

Naval Criminal Investigative Service. The Naval Criminal Investigative Service (NCIS) Manual for Administrations, Volume I, "Regional Forensic Laboratory System," (chapter 40, March 1996), establishes NCIS policies and procedures for submission of forensic evidence. Chapter 40 states, "There are no geographical boundaries delineating or constraining the region [to] a[ny] particular laboratory services. All NCIS components are strongly encouraged to submit evidence to the nearest NCISRFL."

Air Force Office of Special Investigations. AFOSI Manual 71-118, "General Investigative Methods," November 4, 1996, chapter 7, establishes AFOSI policies

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and procedures for submission of forensic evidence to laboratories. The manual requires AFOSI units to use only approved laboratories as outlined in Attachment 9 of the manual. The laboratories listed consist of approved State, local, and Federal forensic science laboratories and services they provide. USACIL and the NCISRFLs are included on the list of approved Federal laboratories.

Marine Corps Criminal Investigation Division. The Marine Corps has no documented policy that specifically addresses submission of evidence to DoD forensic laboratories. Investigative personnel at the one Marine Corps Criminal Investigation Division installation we visited stated that they submitted evidence to USACIL and followed the procedures detailed in Department of Army Field Manual 19-20, "Law Enforcement Investigations," November 1985, for submitting evidence to crime labs.

DCIOs Use of Forensic Laboratories

Submission to Laboratories. In addition to using DoD laboratories and other Federal agency laboratories, the DCIS, AFOSI, NCIS, Marine Corps Criminal Investigation Division, and in a few cases, the USACIDC, use non-Federal agencies for forensic services at no charge. The laboratories are instrumentalities of State and local government, and their primary customers are either State or municipal law enforcement agencies. Army Regulation 195-1 is explicit about using the USACIDC laboratory before obtaining forensic services from other laboratories. Also, the NCIS manual encourages the use of Navy laboratories, but like DCIS and AFOSI policies, it also allows for the use of other crime laboratories. In our questionnaire to the DCIOs, we requested information on the number of laboratory submissions they made to State and local, Federal, NCISRFL, and USACIL laboratories during FYs 1995 and 1996. We received a 48 percent overall return on the questionnaire consisting of the following: DCIS 61 percent; Army 38 percent; Navy 29 percent; Air Force 96 percent; and the U.S. Marine Corps 44 percent. The responding DCIO offices reported 6,651 submissions in FY 1995 and 6,610 in FY 1996. Figure 1 shows the breakdown of the reported responses from the DCIOs on their use of laboratories for FYs 1995 and 1996.

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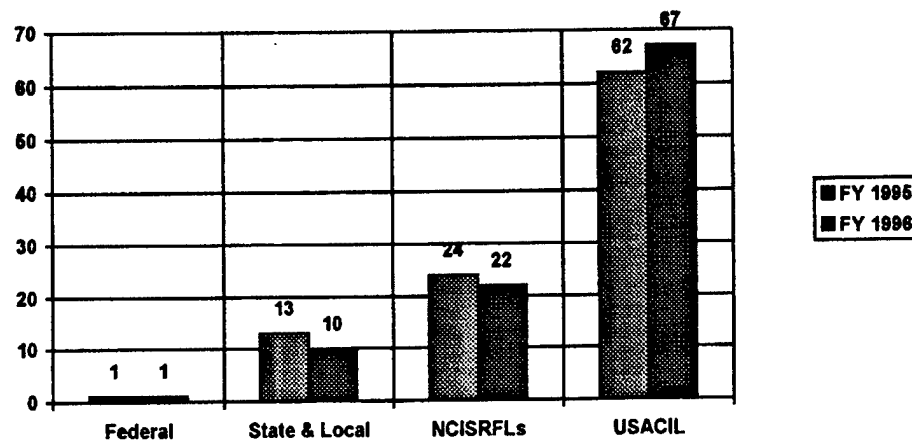


Figure 1. DCIOs Submissions to Forensic Laboratories (%)

In reviewing the data, we attempted to determine the total number of forensic submissions the DCIOs made to State and local laboratories as well as the number of submissions made by each DCIO to State and local laboratories. The responses to the questionnaire, however, did not identify whether evidence submitted to laboratories was a result of joint investigations. Figure 2 shows a breakout of the reported DCIO submissions to the State and local laboratories during FY 1996.

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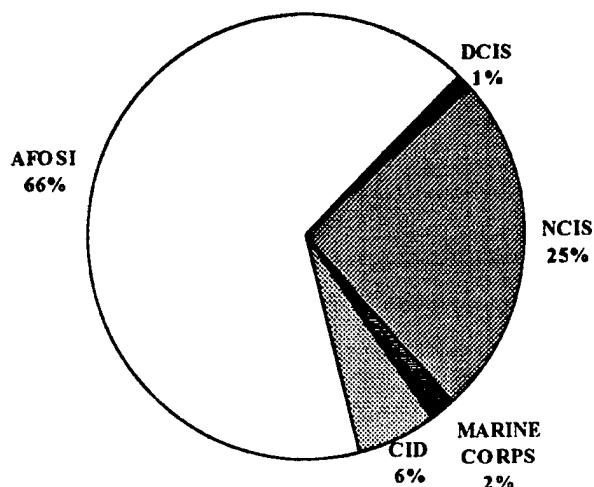


Figure 2. DCIO Submissions to State and local laboratories for FY 1996

Factors Affecting Use of Laboratories. Several factors led to the decision to use State and local crime laboratories: the absence of any policy to the contrary; the services are provided at no cost; satisfaction with previous work, resulting in repeat requests; convenience; laboratory capabilities; and timeliness in receiving results.

Effects on DoD Laboratories. Laboratory directors indicated that determining workload requirements has always been a challenge. The Army's policy requires the USACIDC to use the USACIL unless a waiver is granted, but the USACIL cannot project how much of its resources will be devoted to work for the NCIS and AFOSI. The USACIL estimated that based on historical usage, 20 to 25 percent of its work will be performed for non-U.S. Army agencies. Although the USACIL provides effective forensic support at this time, additional requirements of a considerable magnitude could significantly affect its current turnaround time. In addition, current USACIL facilities and staffing may not be able to support the additional workload.

Navy policy does not require NCIS to use NCISRFLs exclusively. Because the NCISRFLs are limited-service laboratories, some Navy forensic requirements must

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be obtained from other sources. Although the Navy stated that it meets about 80 percent of its own forensic requirements, 15 to 20 percent of its caseload is for agencies outside the Navy. The Navy laboratory directors also expressed concern about how the DCIOs would be affected if they were unable to continue using State and local crime laboratory services.

Forensic Services to Non-Federal Agencies

USACIL Support. Army Regulation 195-1 policy on providing support to State and local agencies requires approval of the USACIL commander or the laboratory director. However, USACIL management stated that the USACIL does not provide this type of service because in its view doing so is prohibited under the Posse Comitatus Act (which prevents the use of Army and Air Force resources in support of civilian law enforcement). Therefore, in following its policy, the Army stated it rarely performs forensic services for non-Federal agencies.

NCISRFL Support. NCIS policy allows the NCISRFLs to provide forensic support to other law enforcement agencies on a no-fee basis. Laboratory directors stated when workload permits they provide support when requested by State or local law enforcement agencies in cases without a military interest. The directors considered the support to be a good vehicle for maintaining a close working relationship that enhances the larger law enforcement community. The NCISRFL Norfolk Director stated that her laboratory does limited work for State and local law enforcement personnel.

Summary

We believe that the DCIOs' historical practices and their policies contribute to the use of State and local crime laboratories, particularly regarding AFOSI and the NCIS. Our concern with the DCIO recurring use of State and local laboratories is predicated on whether doing so complies with fiscal statutes and Department directives. In addition, providing support to non-Federal law enforcement agencies, when there is no legitimate military purpose, may likewise constitute a violation because doing so uses appropriations for other than their intended purpose. The complexities and nuances of jurisdictional law and fiscal statutes and

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their application require legal review of the DoD programs and policies to ensure compliance with the laws. This is particularly essential when the programs, policies, and actions involve the law enforcement community. We believe that the General Counsel, Department of Defense, and the Service General Counsels should review these issues to determine the applicability of the Anti-Deficiency Act and DoD directives. We also recognize that if the submissions currently made to State and local crime laboratories are diverted to the DoD laboratories, an orderly, time-phased adjustment would be needed to provide the DoD laboratories the needed time to prepare for the anticipated increased workload.

Recommendation, Management Comments, and Evaluation Response

B. We recommend that the General Counsel, Department of Defense, and the Service General Counsels review the policies and procedures used by the Defense Criminal Investigative Organizations for requesting and providing forensic laboratory services to ensure compliance with statutory and regulatory requirements.

Air Force General Counsel Comments. The Air Force General Counsel generally disagreed with the finding by opining that AFOSI forensic laboratory usage does not violate the Anti-Deficiency Act. Since the Air Force does not operate forensic laboratories that provide traditional forensic services, as we likewise noted, the General Counsel's comments addressed AFOSI receiving forensic services from State and local laboratories. The Air Force General Counsel concluded that in their view the forensic services the Air Force receives from State and local law enforcement agencies are gratuitous. This is based on an understanding between the parties that the services are furnished for the mutual benefit of the law enforcement agencies involved with no expectation of payment. The Air Force cites a Comptroller General decision on accepting gratuitous services which are provided pursuant to a formal or informal agreement wherein the parties understand there will be no charge. The Comptroller decision, 7 Comp. Gen. 810, 811 (1928) states:

The voluntary service referred to in [31 U.S.C. §1342] is not necessarily synonymous with gratuitous service, but contemplates service furnished on the initiative of the party rendering the same without request from, or agreement with, the United States therefor.

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The Air Force opinion finds no violation of the 31 U.S.C. §1342 prohibition against accepting voluntary services or any other federal fiscal statute. However, the Air Force General Counsel recommended that a written agreement with a clear statement that the services are rendered gratuitously with no expectation of future payment be obtained when receiving forensic services from State and local laboratories. This would preclude receiving a subsequent claim for such services due to a verbal misunderstanding concerning whether the services were gratuitous. The Air Force General Counsel comments do not address AFOSI compliance with DoD regulatory guidance.

NICS Comments: The NCIS concurred with the recommendation. However, the NCIS provided comments that support continuing DoD laboratories practice of providing and receiving forensic services at no cost.

AFOSI Comments. The AFOSI nonconcurred with the recommendation. The Air Force stated that a review of the policies and procedures used by the DCIOs for requesting and providing laboratory services to ensure compliance with statutory and regulatory requirements "may be unnecessary." The rationale for nonconcurrence was that an AFOSI Judge Advocate legal opinion concludes that policies and procedures used by AFOSI comply with statute and regulatory guidance. We note that the AFOSI opinion does not allude to applicable DoD Directives.

DoD General Counsel Comments. The DoD General Counsel did not respond to the draft report.

Army General Counsel Comments. The Army General Counsel did not respond to the draft report.

Navy General Counsel Comments. The Navy General Counsel did not respond to the draft report.

Evaluation Response. Although the Air Force General Counsel generally disagreed with our findings, we note that their opinion satisfies part of the recommendation that the Air Force General Counsel review AFOSI forensic laboratory usage in light of Federal fiscal statutes. We believe that requiring written agreement with a clear statement that the services are rendered gratuitously with no expectation of future payment would preclude receiving a subsequent claim for such services and clarify that gratuitous services are being received. The Air Force General Counsel response did not address the issue of compliance with

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DoD regulatory guidance as set out in our findings and we request they provide supplemental comment. We request that the General Counsel, Department of Defense, the Army General Counsel and the Navy General Counsel provide comments to the final report.

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Part II - Additional Information

Appendix A. Evaluation Process

Scope

This evaluation was performed to satisfy a recommendation from the Office of the Secretary of Defense Board of Investigation Study, "Report of the Advisory Board on the Investigative Capability of the Department of Defense," January 1995. We performed this evaluation from April 1997 through September 1997. We visited the U.S. Army Criminal Investigation Laboratory at Fort Gillem and the Naval Criminal Investigative Forensic Laboratories in Norfolk and San Diego. We also visited the headquarters of the Defense Criminal Investigative Organizations. In addition, we made site visits to selected DCIO field offices and to a Marine Corps Criminal Investigation Division. We sent a questionnaire to the DCIOs and other customers of the laboratories to determine the level of satisfaction in using the DoD forensic laboratories.

The evaluation assessed whether consolidating all DoD forensic support under one integrated laboratory system would result in additional cost efficiencies and enhanced customer support. The evaluation also focused on the efficiency and effectiveness of the DoD forensic laboratories policies and procedures in support of the criminal investigative mission and the adequacy of resources needed to perform the forensic laboratory mission. We concentrated on the management aspects of the laboratories and the support provided to the DCIOs by the laboratories. We did not conduct a technical evaluation of scientific laboratory processes and procedures.

Limitations to Evaluation Scope. The scope was limited in the following areas.

- o The evaluation did not include the joint DoD Computer Forensic Laboratory. On January 31, 1997, an evaluation of the "Defense Investigative Organization Programs for Investigating Computer Crime (Project No. 70G-9022)" was announced by the Office of the Inspector General, DoD. The joint DoD Computer Forensic Laboratory will be included in that evaluation.

- o The NCISRFL, Norfolk, under a memorandum of agreement with the Services, is responsible for the military working dog program. We did not evaluate this program as we considered it outside and beyond the scope of the requirement.

Methodology

We reviewed policies, directives, operating procedures, reports, chain-of-custody documents, and laboratory log books. To assess management of the laboratories, we interviewed managers and support personnel at USACIDC and NCIS headquarters and at the laboratories. We also interviewed agents and legal personnel to determine their satisfaction in services received from the laboratories and to determine their perceptions of the DoD forensic laboratories. In addition, we provided a questionnaire to the DCIOs and laboratory customers to determine the level of satisfaction in using the DoD forensic laboratories during FYs 1995 and 1996.

Contacts During the Evaluation. We visited or contacted individuals and organizations within the DoD. Further details are available on request.

Prior Evaluations and Other Reviews

In 1990 a Tri-Service Working Group (TSWG) was established to study specific functional areas and to identify possible economies. The Forensic Science Laboratory Investigative Equipment Panel (FSLIEP) was one of 11 TSWG panels. The FSLIEP was tasked to identify economies and responsiveness in the forensic laboratory support area to include considering the potential consolidation of the DoD laboratories. In exploring the feasibility of establishing a single forensic laboratory, the FSLIEP provided a preliminary report on January 15, 1991, and on March 27, 1991, a FSLIEP staff study identified four options to the TSWG. The TSWG did not support the FSLIEP options because of excessive up-front costs and because the NCIS did not agree with a consolidation of resources. The FSLIEP was then further tasked to study the proposal of one Army full service laboratory with limited service satellites and to explore the feasibility of the Army as Executive Agency for the DoD forensic laboratory system. The FSLIEP could not reach a consensus.

In 1994, the USACIDC conducted a "Review of Potential to Contract USACIL Examination Workload." The review concluded that no full-service Federal or state crime laboratory or commercial laboratory could take over a portion of the USACIL caseload and do it for the same USACIL cost, or less. Thus, the review

Appendix A. Evaluation Process

recommended that for the time being, contracting out for Army forensic laboratory services was not feasible.

In 1996, the NCIS examined the feasibility and cost-effectiveness of contracting out for forensic laboratory services. After identifying and reviewing criminal investigative and laboratory costs, the determination was made that contracting out was not feasible, not cost-effective and not in the best interest of the NCIS and the Navy.

Appendix B. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Personnel and Readiness
Assistant Secretary of Defense (Command, Control, Communications and Intelligence)
General Counsel, Department of Defense
Deputy General Counsel (Inspector General)
Director, Defense Criminal Investigative Service

Department of the Army

Assistant Secretary of the Army (Financial Management and Comptroller)
Assistant Secretary of the Army (Manpower and Reserve Affairs)
General Counsel, Department of the Army
Inspector General, Department of the Army
Auditor General, Department of the Army
Deputy Chief of Staff for Operations and Plans
Commander, Army Criminal Investigation Command
 Commander, Army Criminal Investigation Laboratory
Commander, Intelligence and Security Command

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller)
General Counsel, Department of the Navy
Director, Naval Criminal Investigative Service
 Director, Naval Criminal Investigative Service Regional Forensic Laboratory,
 Norfolk

Appendix B. Distribution List

Department of the Navy (cont'd)

Director, Naval Criminal Investigative Service Regional Forensic Laboratory, San Diego
Inspector General, Department of the Navy
Counsel for the Commandant (Marine Corps)

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
General Counsel, Department of the Air Force
Inspector General, Department of the Air Force
Commander, Air Force Office of Special Investigations
Chief of Security Police for the Air Force

U. S. Marine Corps

Deputy Chief of Staff for Plans, Policies and Operations, Headquarters, U.S. Marine Corps
Inspector General, Headquarters, U.S. Marine Corps

Other Defense Organizations

Director, Defense Logistics Agency
General Counsel, Defense Logistics Agency
Director, National Security Agency
Inspector General, National Security Agency
Director, Washington Headquarters Service
Chief, Defense Protective Service
Inspector General, Defense Intelligence Agency

Non-Defense Federal Organizations and Individuals

Office of Management and Budget

Technical Information Center, National Security and International Affairs Division,

General Accounting Office

Chairman and ranking minority member of each of the following congressional committees and subcommittees:

Senate Committee on Appropriations

Senate Subcommittee on Defense, Committee on Appropriations

Senate Committee on Armed Services

Senate Committee on Government Affairs

House Committee on Appropriations

House Subcommittee on National Security, Committee on Appropriations

House Committee on Government Reform and Oversight

House Subcommittee on Government Management, Information, and Technology,

Committee on Government Reform and Oversight

House Subcommittee on National Security, International Affairs, and Criminal Justice,

Committee on Government Reform and Oversight

House Committee on National Security

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Part III - Management Comments

Department of Army Comments



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR OPERATIONS AND PLANS
400 ARMY PENTAGON
WASHINGTON, DC 20310-0400



DAMO-ODL

7 May 98

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL,
ATTN: CIPO, 400 ARMY NAVY DRIVE,
ARLINGTON, VA 22202-2884

SUBJECT: Report on the Evaluation of the Department of Defense (DOD) Forensic
Laboratories (Project No. 70G-9020)

1. Disagree with the subject draft report. Particular attention is invited to paragraph 2g below concerning cost analysis accounting systems.
2. The following comments are provided:

a. Reference Evaluation Objective page 1.

Comment. Evaluation of the "adequacy of resources needed to perform the forensic laboratory mission" is listed as one of three objectives of the evaluation. There are no direct comments on resources in the draft report.

Recommendation. Provide information on the resource issue.

b. Reference Army Forensic Services page 4.

Correction. Trace evidence should be added to U.S. Army Criminal Investigation Laboratory (USACIL) disciplines. Also, the last sentence should read "...about 75 percent support Army criminal investigations."

Reason. Accurate description of USACIL disciplines. Also, the report does not state that the USACIL supports the U.S. Army Military Police.

Recommendation. Revise the paragraph.

c. Reference Air Force Forensic Services page 5.

Comment. Disagree with the text of the paragraph. The Air Force's existing computer laboratory and DOD approved initiative for the Air Force to be the executive agency to construct a high cost DOD computer forensic laboratory (DCFL) in the metropolitan Washington, DC area were not evaluated. The draft states that computer forensics is not in competition with another laboratory, does not duplicate other forensic work, and was not reviewed because it was outside the scope of the evaluation. The

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USACIDC has a computer forensic capability and has determined that over 50% of computer crime evidence require multidiscipline examinations (i.e., data recovery, fingerprint, etc.) The evaluation's purpose was to determine if all DOD forensic support should be consolidated. Volume 1, Report of the Advisory Board on Investigative Capability of the Department of Defense, page 144, recommended that "the Secretary's Board on Investigations study whether ...one integrated laboratory system would result in additional cost efficiencies and enhanced customer support." It is appropriate for the study and report completed by the DODIG include both the Air Force's computer forensic laboratory initiative with existing USACIDC computer crime capability, which would support both the recommendation of the Advisory Board and Section 907 of the National Defense Authorization Act.

Recommendation. The study should continue. All forensic support should be included to determine if increasing Defense Infrastructure is cost effective.

d. Reference American Society of Crime Laboratory Directors (ASCLD) Accreditation Program page 9 (continued).

Comment. The closing paragraph identifies the USACIL as a "full service laboratory." This is inaccurate since USACIL does not perform toxicology. The USACIL is more accurately described as "offering the widest range of forensic services of any accredited Federal laboratory."

Recommendation. Revise the paragraph.

e. Reference Prioritizing Laboratory Requirements page 9.

Comment. The paragraph cites the average turn around time for examinations by the Navy and Army crime laboratories. Specifically, the Navy is cited with an average completion time between 14 and 28 days and the Army laboratory with an average of 47 days.

Recommendation. Clarification is needed to show that the Army average turnaround time takes into account time-consuming disciplines such as DNA testing. Also, the two Services have different methodologies for calculating their samples and processing time.

f. Reference Workload and Productivity Reports page 15.

Comment. A sentence reading "For FY 1995..." (Navy crime labs) ... "reported 2,289 total cases open. The USACIL reported 3,134." The sentence gives the impression that the USACIL statistics are from FY 95. That is incorrect. The statistics come from FY 96.

Recommendation. Revise the sentences.

Department of Army Comments

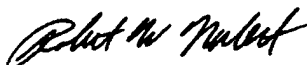
g. Reference. Finding A (page 16) concerning cost accounting system for forensic laboratories.

Comment. DOD laboratories, including the USACIL, do not have a common denominator for comparing units of work. Other Federal and state laboratories have similar problems in the counting and comparing of common units of work and in cost accounting at the micro level. The unit cost analysis recommended in the draft report is outside current capabilities of DOD and USACIL. There are no funds to support the recommendation. It is estimated that \$100,000 is required in the first year to set up a cost accounting system.

Recommendation. DOD not direct laboratories to perform unit cost analysis until proper funding is provided. When DOD and the Service General Counsels have reviewed this matter, any resulting increased case submission to USACIL must be contingent upon the receipt of additional funding and personnel from other Services.

3. The point of contact for this action for this office Mr. Jeffery Porter, (703) 681-4868. The USACIDC policy point of contact is CW4 Paul Constable, 806-0219.

FOR THE DIRECTOR OF OPERATIONS, READINESS AND MOBILIZATION:



ROBERT W. NEUBERT
Colonel, GS
Chief, Security, Force
Protection, and Law
Enforcement Division



DEPARTMENT OF THE NAVY
HEADQUARTERS
NAVAL CRIMINAL INVESTIGATIVE SERVICE
WASHINGTON NAVY YARD BLDG 111
716 SICARD STREET SE
WASHINGTON DC 20388-5380

7000
Ser 006/8U0016
13 May 1998


**MEMORANDUM FOR THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE,
DEPUTY ASSISTANT INSPECTOR GENERAL FOR CRIMINAL
INVESTIGATIVE POLICY AND OVERSIGHT**

SUBJECT: DODIG Draft Report On: "Evaluation of the DOD Forensic
Laboratories" (70G-9020)

References: (a) DODIG Draft of a Proposed Evaluation Report
(Project No. 70G-9020) dated March 11, 1998

Enclosures: (1) Naval Criminal Investigative Service Response to
Subject Report

Enclosure (1) is forwarded in response to reference (a).
In accordance with prior coordination with Office of the Navy
General Counsel, copies of enclosure (1) have been forwarded to
that office and to Assistant Secretary Of The Navy (Financial
Management and Comptroller).


THOMAS W. FISCHER
Assistant Director

Department of Navy Comments

Naval Criminal Investigative Service Response
to
DODIG Draft Report of 11 March 1998
on
"Evaluation of the Department of Defense Forensic Laboratories"
(Project No. 70G-9020)

Finding A: Assessing Cost-Effective of DoD Forensic Laboratories

Page 13 - "The DoD forensic laboratory directors do not perform cost accounting to determine the cost of forensic examinations. In addition, DoD laboratories are not uniform in the methods they use for collecting workload data. These conditions exist because the laboratories do not maintain unit cost information at the examination level and because the laboratory directors have not established a uniform method for collecting data. As a result, the laboratories are unable to assess the cost-effectiveness of their operations in comparison with other crime laboratories, and they lack information upon which they can base their plans for future budget and operational decisions."

Recommendations for Corrective Action

A.1. We recommend that the Director, U.S. Army Criminal Investigation Laboratory, and the Directors, Naval Criminal Investigative Service Regional Forensic Laboratories, establish a cost accounting system for their examinations.

NCIS Position:

Non-concur with Recommendation A.1.

Comment:

NCIS finds it difficult to justify doing unit cost analysis. NCIS does not want to divert laboratory dollars and manpower to do a unit cost analysis study, questions whether a unit cost comparison with other crime laboratories can accurately be used to gauge overall efficiency, and successfully uses other laboratory indicators to make budget and operational decisions.

NCIS does not have the in house expertise to do a unit cost study. Such a study would require that NCIS commit dollars and manpower to the project. Furthermore, it is unclear how much such an initial study would cost. Estimates are that it could be substantial - \$100k or more. For instance, it was recently determined that the contract cost to have Research Triangle Institute, Inc., do a one time cost analysis study of the DoD Drug (Urine) Testing Laboratories is just under \$200K.

To initiate an in-house unit cost analysis study NCIS employees would have to be trained through specialized course work or NCIS could contract out the work. Either way, resources would have to be diverted from other NCIS programs. Having experienced resource reductions and been in a down sizing mode for several years, such a project would further tax NCIS limited resources.

Because unit cost accounting would be an ongoing effort, the cost of funding a cost accounting system over the years could be substantial. NCIS believes that the commitment of time, funds and people to do a unit cost analysis study can be better spent to enhance laboratory operations which would result in a better and more cost-effective service to the customers. NCIS has never budgeted to do a unit cost analysis study. Nor has NCIS budgeted for such a study in FY98 or in the out years.

Although other cost studies of the RFLs have been conducted during the past seven years, the NCIS Regional Forensic Laboratories have never been asked to establish a cost accounting system. The cost studies have included a privatization/contracting out of laboratory service study completed in 1996 at the request of the Secretary of the Navy. This study examined NCIS requirements for forensic laboratory services, compiled RFL lab operating costs, and compared RFL costs to those of other crime labs. (It should be noted that a similar study was completed January 3, 1994 by US Army Criminal Investigations Division Command of the US Army Criminal Investigation Laboratory (USACIL)).

During 1991 - 1992, a Tri-Service Working Group (TSWG) Staff Study titled "Identification of Economics in DoD Forensic Sciences Operations" was done of the NCIS RFLs and USACILs. The study involved a limited cost analysis similar to the privatization study and was reviewed by TSWG Comptrollers.

During 1993 a limited cost analysis study was done by RFL-Norfolk to determine the additional dollars and manpower necessary to assume responsibility for all DoD commands having a Military Working Dog (MWD) Drug Detection program. The study determined the additional staff, equipment, operating costs and facility required to expand MWD support to include, besides the Navy program already supported, the Army, Air Force and USMC programs. Although this was a limited scope cost analysis study, the study was of sufficient detail to assess the laboratory costs and to use the information to prorate the share each agency needs to reimburse NCIS annually. No agency questioned the cost findings from the study. All formally entered into a service contract by signing the Memorandum of Agreement.

Additional cost analysis beyond that already done in the three studies was never requested. Information about RFL operational costs provided in all the studies is readily available. More

Department of Navy Comments

current RFL operational costs can be collected and provided upon request.

Except for MWD program support, all other forensic laboratory services provided by the RFLs are done on a gratis basis and therefore no unit costing has ever been necessary. This would not necessarily be the case if the RFLs functioned as a Defense Working Capital Fund (DWCF) operation. (DWCF was formally known as Defense Business Operating Fund (DBOF).) NCIS is not aware of any agency within DoD that does unit cost analysis except ones funded on a DWCF basis. They accurately have to assess what fees or overhead to charge their customers. The NCIS RFLs do not anticipate charging for forensic services.

NCIS also has reservations about the ability of a cost accounting system to judge with any degree of certainty how efficient the RFLs are compared to other crime laboratories. Can the RFLs realistically be compared to other forensic laboratories whose mission and focus are different? The RFLs have primary responsibility to serve the criminal investigative needs of the Department of the Navy which has a worldwide presence with its unique requirements. There is little guarantee that other crime lab's unit cost analysis study would consider the broad scope of RFL responsibilities and the geographical area serviced to ensure that any crime lab efficiency comparison would be credible.

American Society of Crime Laboratory Directors (ASCLD) Workload Surveys show that great disparity exists among city, county, state and federal crime labs as to their productivity, operational costs, and size of the geographical region serviced. ASCLD surveys have shown that cost-effectiveness of crime labs that serve smaller geographical regions generally is better when measured by the number of cases an examiner completes during a month. A rule of thumb seems to be that city and county labs complete more cases per examiner per month than state labs and complete still more cases than federal crime labs.

Finally, NCIS's response to the draft report comment that crime laboratories "lack information upon which they can base their plans for future budget and operational decisions" is that NCISHQ regularly monitors RFL dollars and manpower requirements. The RFL Case backlog and the turnaround time in each discipline are used as gauges to justify and request additional resources. The NCIS Executive Resource Board has consistently approved additional staff and backfill of current vacancies because the RFLs has provided sufficient justification, such as unmanageable case backlog and unacceptably long turnaround times. Timely replacement of lab instruments and major items of equipment is monitored and programmed to coincide with the end of an instrument's anticipated useful life cycle. Out year funding for laboratory instruments is requested via a Program Objectives Memorandum (POM) process. These funds are increased by expiring

appropriations by the Comptroller when exigent circumstances warrant. Because all high cost lab instruments are on service contracts, unscheduled major instrument replacement seldom is necessary.

Recommendations for Corrective Action

A.2. We recommend that the Director, U.S. Army Criminal Investigation Laboratory, and the Directors, Naval Criminal Investigative Service Regional Forensic Laboratories, establish standard measurements to accurately define and report forensic workload statistics.

NCIS Position:

Concur with Recommendation A.2.

Comment:

NCIS suggests that the standardized way in which crime laboratory cases are counted be done in the manner recently prescribed by the American Society of Crime Laboratory Directors (ASCLD) per enclosure (1), the "ASCLD Workload Survey."

Almost simultaneous with the release of the DOD-IG Draft Report, ASCLD disseminated enclosure (1), "ASCLD Workload Survey." Background information about ASCLD is that it is a nonprofit professional organization of managers and supervisors employed in forensic laboratories. Among the organization's objectives are to promote and establish a basis for upgrading the professionalism of crime laboratories and to increase cooperation between local, state and federal crime laboratories. Over 300 laboratories are members in ASCLD. About ten percent of the members represent international forensic laboratories. NCIS membership in ASCLD includes both Regional Forensic Laboratory Directors and the Head, Forensic Sciences Division. USACIL also has membership in ASCLD.

As stated in the inside cover per enclosure (1), the ASCLD project was the "Development of a Survey Tool for the Measurement of Workload in Crime Laboratories. The National Institute of Standards and Technology, office of Law Enforcement Standards (NIST/OLES), provided funding from the National Institute of Justice (NIJ) to assist the ASCLD in developing a professional survey tool that would measure workload, backlog, and output of crime laboratories in a consistent and standardized manner. The questionnaire was designed by Aspen Systems Corporation, with input from and review by ASCLD's Management Survey Committee, which helped to identify the individual questions to be asked and appropriate wording. The final instrument reflects results from a review of literature relating to workload measurement: a

Department of Navy Comments

pretest of a random group of crime laboratories selected on the basis of size, geographic region, and organizational structure; and follow-up interviews conducted with pretest laboratories (both responders and nonresponders). . . ."

The "ASCLD Workload Survey" booklet has definitions for several units of work including definitions for case, submission, item, turnaround and hit. The definitions take into account the uniqueness of a particular forensic discipline and lend themselves for having the RFLs adopt them to replace their current definitions. NCIS believes using the "ASCLD Workload Survey" guidelines are most appropriate for counting cases because the guidelines are endorsed by ASCLD members and will be used to report calendar 1998 statistics.

In conclusion, NCIS believes that standardization of the way crime lab cases are counted and workload data is reported is achievable according to the general methods suggested by ASCLD. NCIS will be converting its system of counting cases to ASCLD's as soon as the RFLs are able to have the computer data collection programs in each lab modified.

Finding B: Reimbursement for Forensic Services

Page 17 - "Defense Criminal Investigative Organizations (DCIOs) currently request and receive forensic services from non-Federal agencies at no charge. In addition, the Navy forensic laboratories provide forensic support to non-Federal law enforcement agencies on a no-fee basis. The DCIOs use civilian laboratories through policy direction and as a matter of convenience and timeliness. Existing DCIO policies and procedures for providing and receiving services do not require reimbursement and could lead to violations of fiscal statutes and/or regulatory directives."

Recommendations for Corrective Action

B. We recommend that the General Counsel, Department of Defense, and the Service General Counsels review the policies and procedures used by the Defense Criminal Investigative Organizations for requesting and providing forensic laboratory services to ensure compliance with statutory and regulatory requirements.

NCIS Position:

Concur with Recommendation B.

Comment:

The issues the draft report raises concerning the exchange of no-

charge services appear to be without merit and can be broken down into four areas, as follows:

a. The RFLs violate the "purpose" statute by providing laboratory services at no charge to state and local law enforcement agencies. The draft report cites 31 U.S.C. 1301 as requiring that appropriations be applied only to the objects ("purpose") for which the appropriations were made. Without actually examining the appropriations in question, the report implies that providing laboratory services to state and local agencies is not one of the purposes of the appropriations which the RFLs receive.

The report provides a brief discussion of the three types of law enforcement jurisdiction that may be encountered at DOD installations. (Note that it refers to proprietary jurisdiction as "partial" jurisdiction.) The implication is that in those investigations in which DOD has no investigative jurisdiction, it would be improper to use appropriated funds to provide no-charge laboratory services to state and local agencies to support their investigations.

This is an unduly restrictive interpretation of fiscal law. Under the "necessary expense" doctrine, the Comptroller General has recognized that not all proper items of expenditure will be specified in an appropriation. Rather, appropriations are necessarily general, and some expenditures which are not specifically identified in an appropriation will nevertheless be deemed proper if they are "necessary expenses." The Comptroller General has identified a three-prong test to determine whether a given expense is a "necessary expense":

- Whether there is a logical relationship between the appropriation and the expenditure. The expenditure does not have to be literally necessary or even the best way to achieve the purpose of the appropriation, just logical. Under the circumstances, providing no-charge services to state and local agencies seems to be a logical use of funds that are appropriated for law enforcement purposes.
- Whether the expenditure is prohibited by law. The report cites no law that explicitly prohibits providing no-charge laboratory services to state and local law enforcement. The report cites only 31 U.S.C. 1301 as the law implicated by this purpose of the use of appropriated funds, but that is the very statute the Comptroller General has interpreted under the "necessary expense" doctrine as permitting discretion with respect to the purpose of appropriated funds.

- Whether the proposed use of the appropriated funds has otherwise been provided for. If the proposed use of the funds is for an expenditure already covered by another appropriation, then the "necessary expense" doctrine will not permit the expenditure to be covered by the proposed appropriation. The report does not identify an existing appropriation that specifically provides for performing laboratory services for state and local agencies; thus, there appears to be no "other" appropriation that would bar the application of the "necessary expense" doctrine to justify the use of appropriated funds for this purpose.

Since the three prongs of the test for the "necessary expense" doctrine appear to be satisfied, then 31 U.S.C. 1301 should not bar the use of appropriated funds for laboratory services for state and local agencies, if the Navy determines that this is a logical purpose of the funds. It should be noted that the Comptroller General and the General Accounting Office grant considerable deference to an agency's administrative determination. Further, they have expressly recognized that law enforcement agencies have even broader discretion than other agencies in this area. The reasons for this broad discretion are discussed below.

b. The RFLs violate the Antideficiency Act by providing laboratory services at no charge to state and local law enforcement agencies. 31 U.S.C. 1341 (the Antideficiency Act) prohibits obligating funds in excess of - or in advance of - authorized appropriations. The report's argument that the RFLs are violating the Antideficiency Act goes something like this: the RFLs are using appropriated funds for an unauthorized purpose (per paragraph a, above); there are no funds appropriated for that purpose; therefore, by using funds for which there is no appropriation, by definition the RFLs are using funds in excess of appropriations. This argument fails because, as noted above, the use of the funds for the purpose of providing laboratory services to state and local agencies is authorized under the "necessary expense" doctrine. Therefore, there is no violation of the Antideficiency Act unless the appropriation actually used is exceeded. The report gives no evidence of that.

The report fails to establish an Antideficiency Act violation for the further reason that it does not show that the RFLs incur incremental costs in providing laboratory services to state and local agencies. If no incremental costs are incurred, then it can be argued that there would be no obligation of funds to examine in the first place.

c. The DCIOs violate the Antideficiency Act by accepting laboratory services at no charge from state and local

laboratories. The report asserts that the Antideficiency Act is intended to keep an agency's level of operations within amounts appropriated for that purpose; hence, obtaining funds or services from other sources is considered to be an improper augmentation of an appropriation.

One of the general rules of fiscal law is that, with certain exceptions, all funds received by government agencies from outside sources must be deposited into the Treasury general fund. For this reason, the RFLs would not be permitted to fund their operations using funds from sources outside their appropriations. The report, however, does not explain why receiving no-cost services constitutes an augmentation of an appropriation or a violation of the Antideficiency Act. The DCIOs are not receiving funding by accepting no-charge laboratory services, and the report cites no authority that would require the services to be treated like cash. The Comptroller General does not require agencies to treat all "contributions" from outside sources as cash. For example, the Comptroller General will permit an agency to retain equipment it receives from an outside source to replace agency equipment the outside source damaged.

The report also implies that the acceptance of no-charge services violates the Antideficiency Act by creating a financial obligation by the government toward the state and local laboratories for payment of the services. If the services were not, in fact, no-charge services, this would, without more, be an unauthorized commitment at most. In any event, the DCIOs do not offer to pay for the services, nor do the state and local laboratories ask for payment; it is understood by both parties that no payment will occur. Indeed, the state and local laboratories do not charge their other customers for their services either. Under these circumstances, where no money is involved, it does not appear that there has been a violation of the Antideficiency Act, which states that an officer or employee may not "...make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation..."

d. The DCIOs violate the statutory limit on voluntary services when they accept laboratory services at no charge from state and local laboratories. 31 U.S.C. 1342 prohibits the acceptance of voluntary services by the government, except under certain circumstances not applicable here. As the report itself points out, however, the purpose of this statute has been interpreted by the Department of Justice as being to protect the government against subsequent reimbursement claims from "volunteers." The Department of Justice differentiates between so-called voluntary services, on one hand, and truly gratuitous services, on the other hand, for which there never was an expectation of payment and for which there is no risk of claims against the government. For the reasons noted immediately above,

Department of Navy Comments

the services provided to the DCIOs by state and local laboratories clearly fall in the category of truly gratuitous services, for which there is no risk of claims against the government. The services provided by the state and local laboratories are in stark contrast to the volunteer work that might be provided by individuals with whom there has not been an established working relationship. Using the analysis of the Department of Justice, the limitations on voluntary services should not apply here.

For the above reasons, the report does not appear to have established that the exchange of no-charge laboratory services between the DCIOs and state and local jurisdictions violates any law. What is more, the report's objection to this practice is illogical, impractical, and contrary to current trends within DOD. First, with respect to the services provided to the state and local agencies, the report does not specify what is the significance of the fact that the RFLs provide the services at no charge. If it were a violation of either the purpose statute or the Antideficiency Act to expend appropriated funds for services to state and local jurisdictions, it is not clear how charging for the services would remedy the violation. Any monies received by the RFLs for the services would have to go into the Treasury general fund, which would not alter the fact that appropriated funds arguably were improperly expended in the first instance.

Secondly, the premise underlying the report's objection to the no-charge exchange of laboratory services is that law enforcement agencies can operate efficiently as if they were commercial vendors. Contrary to this premise, law enforcement agencies of necessity operate cooperatively. This is probably one of the reasons why, as noted above, the Comptroller General gives special deference to the administrative determinations of law enforcement agencies regarding the purpose for the use of appropriated funds. Criminals do not oblige our fiscal sensibilities by adhering to jurisdictional alignments in perpetrating their offenses; instead, they perpetrate their offenses without regard to jurisdiction. Consequently, in many instances more than one law enforcement agency has jurisdiction over the offense. In nearly all instances, offenses in one jurisdiction have at least an indirect effect in nearby jurisdictions. These factors mandate cooperation among agencies. But as noted above, if it were improper to provide no-charge services to state and local agencies, then it probably would also be improper to provide those services even for a charge. If the RFLs were to cease exchanging laboratory services with state and local agencies, the agencies on both sides of the former exchange would suffer delays and inefficiencies in obtaining necessary laboratory services.

It should be noted that law enforcement agencies cooperate at no charge in many ways other than laboratory services. For example,

if one agency obtains a warrant for the arrest of a criminal, another agency will arrest that criminal if he is found in their jurisdiction. The arresting agency does not charge the wanting agency for services rendered. Based on the objection raised in the report, however, it would be improper for NCIS to accept this or any other "voluntary" service from a state or local agency.

DOD Directive 5525.5 and SECNAVINST 5820.7A set out the policies for providing assistance to civilian law enforcement officials. One of the primary purposes of these regulations is to provide guidance and an approval scheme whereby DOD agencies may provide assistance to civilian law enforcement officials without violating the Posse Comitatus Act. What is significant is that the regulations permit assistance to civilian law enforcement officials at all. Such assistance necessarily implicates the use of appropriated funds, at least indirectly, but if the use of such funds to assist civilian law enforcement were illegal, following the procedures of the instructions would not cure the illegality. The plain fact is that it is not inherently improper to use appropriated funds to assist civilian law enforcement.

Finally, the report's objection to the exchange of no-charge services, if extended to its logical conclusion, would prohibit the exchange of such services even among the DCIOs. The various DCIOs and the DOD forensic laboratories all receive different appropriations. Exchanging services among one another would not fit - according to the report's narrow interpretation - within the purposes of those appropriations. Further, in addition to precluding the exchange of laboratory services among the DCIOs, a restrictive interpretation of fiscal law would also adversely impact such recent cooperative initiatives as collocation and cross-servicing of investigative leads.

For all the above reasons, Finding B of the report does not appear to be well founded.

Department of Air Force Comments



Office of the Secretary

DEPARTMENT OF THE AIR FORCE
OFFICE OF THE INSPECTOR GENERAL
WASHINGTON, DC



MAY 18 1998

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING
OFFICE OF THE INSPECTOR GENERAL DEPARTMENT OF
DEFENSE

FROM: SAF/IG

SUBJECT: Evaluation of the Department of Defense Forensic Laboratories, Project No. 70G-9020, March 11, 1998

This is in reply to your memorandum requesting the Assistant Secretary of the Air Force (Financial management and Comptroller) to provide Air Force comments on subject report. The report has been reviewed legal experts assigned to the Air Force Office of Special Investigations and Air Force General Counsel. Both reviews essentially non-concurred with concerns raised in finding B. (Since the Air Force owns no forensic laboratory referenced in this evaluation, finding A does not apply.) Comments from both reviews are attached.

The SAF/IGX OPR for this report is Lt Col Rogan who can be reached at (703) 695-3045 if additional information is required.

Attachments:

1. AFOSI/CC Memo with JA comments
2. SAF/GCA Comments

cc:

AFOSI/XOG

RICHARD T. SWOPE
Lieutenant General, USAF
The Inspector General

Golden Legacy, Boundless Future... Your Nation's Air Force



DEPARTMENT OF THE AIR FORCE
AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS

APR 23 1998

MEMORANDUM FOR SAF/IGI

FROM: AFOSI/CC
500 Duncan Avenue
Bolling AFB DC 20332-6000

SUBJECT: Report on the Evaluation of the Department of Defense Forensic
Laboratories (Project No. 70G-9020)

The AFOSI Criminal Division and Staff Judge Advocate have reviewed the draft report, dated 11 Mar 98, and do not concur with recommendation "B." The draft report recommends that the DoD and Service General Counsels review policies and procedures used by the DCIOs for requesting and providing laboratory services to ensure compliance with statutory and regulatory requirements. Our non-concurrence is based on the belief that such a review may be unnecessary. The legal opinion (attached) rendered by AFOSI's Judge Advocate concluded that current policies and procedures used by AFOSI comply with statute and regulatory guidance. If you have any questions, please direct them to Mr. Mike Speedling at (301) 981-0864 (DSN 858-0864).

Francis X. Taylor
FRANCIS X. TAYLOR
Brigadier General, USAF
Commander

Attachment:
Memo from HQ AFOSI/JA, 23 Apr 98

"PRESERVING OUR LEGACY, PROTECTING THE FUTURE"



DEPARTMENT OF THE AIR FORCE
AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS

23 Apr 98

MEMORANDUM FOR SAF/IGI

FROM: HQ AFOSI/JA

SUBJECT: DoD IG Report 70G-9020, Finding B "Reimbursement for Forensic Services"

1. Finding B questions the DCIO's practice of requesting and receiving forensic services from State and local agencies in a number of cases, speculating it "could lead to violations of fiscal statutes and/or regulatory directives." We respectfully disagree. Neither 31 U.S.C. § 1342, nor established principles of fiscal law relating to prohibitions against augmentation, are offended by the reciprocal relationship between State, local, and federal governments in support of mutually beneficial law enforcement purposes.

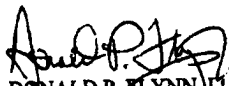
2. The study proceeds from the legally flawed premise that the situs of a crime (within the United States) determines whether a State has a "legitimate interest" in the investigation and prosecution of a crime taking place thereon. In the first place, there are very few Air Force bases left in which there is still exclusive federal jurisdiction. All or nearly all USAF bases are either concurrent jurisdiction or less. Aside from that, the principle governing our prosecutorial jurisdiction relates to the status of the individual and the nature of the crime, not the jurisdictional characteristics of the land on which the crime takes place. Even in the comparatively rare circumstance where a crime over which AFOSI had investigative jurisdiction took place on exclusive federal jurisdiction land, and thus prosecution could only proceed in federal court, it does not follow that the State has "no interest" in that prosecution, any more than it follows that a State has no interest in the suppression of fires on federal lands bordering private or state property. Reciprocal arrangements between USAF and State and local firefighting units are not only permitted, they are encouraged inasmuch as they lead to obvious efficiencies, maintain readiness and interoperability between firefighting units, and contribute to a synergistic approach to natural disasters exceeding the capabilities of a single jurisdiction. See DoDI 6055.6, Nov 4, 1996.

3. Reference to anti-augmentation principles is likewise misplaced. The Miscellaneous Receipts Statute, 31 U.S.C. § 3302(b), is one of two statutory embodiments of this principle. That statute clearly relates to the receipt of money, a problem not implicated here. The prohibition against gratuitous service, 31 U.S.C. § 1342, does not as a general rule apply to situations wherein there is a mutual benefit to both parties in the transaction. This is particularly the case with respect to cooperation between and among federal, state, and local law enforcement jurisdictions, something strongly encouraged by statute. See Chapter 18 of Title 10, 10 U.S.C. §§ 371 *et seq.* Section 377 of that chapter, in particular, waives Economy Act (reimbursement) provisions where support is provided "in the normal course of military training or operations" or "results in a benefit" to the providing agency. Routinely, across the U.S., local police and law enforcement jurisdictions use DoD facilities, particularly small arms ranges, to train—at no expense.

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In the case where the tables are turned, and a state or local law enforcement agency is providing the military support, fundamental principles of reciprocity come into play. These principles are entirely consonant with the statutory admonition to enhance cooperation between civilian and military law enforcement found in 18 U.S.C. § 380. A State or locality affirmatively benefits from the investigation, resolution, and successful prosecution of crime within the contours of its territory, whether that individual is tried in State, federal, or military court.

4. Restricting AFOSI to the use of DoD or federal facilities would neither improve efficiency nor save resources. On the contrary, assuming AFOSI's demand for forensic services would not diminish, an inefficiency would be induced. All of those procedures formerly done by State labs, usually in facilities more-or-less nearby, would now have to be shipped away, joining the queue with all of the others, with the inevitable increase in processing time and commensurate strain on already stretched human and physical resources. Alternatively, we would have to build and resource another forensic laboratory responsive to OSI's requirements. The absurdity is self-evident, and is not a result intended or required by fiscal law.



DONALD P. FLYNN, Lt Col, USAF
Deputy Staff Judge Advocate

Department of Air Force Comments



Office Of The General Counsel

DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC 20330-1740

15 MAY 1999

MEMORANDUM FOR LT COL ROGAN, SAF/IGX

FROM: SAF/GCA

SUBJECT: DoD IG Report 70G-9020, Finding B "Reimbursement for Forensic Services"

You asked for our review and comments concerning Finding B of the DoD IG draft report entitled "Evaluation of the Department of Defense Forensic Laboratories", dated March 11, 1998. Specifically, in finding B the DoD IG questions whether the Defense Criminal Investigative Organizations' (DCIOs), which includes AFOSI, practice of requesting and receiving forensic laboratory services from state and local law enforcement agencies without charge violates the fiscal statutes, in particular the Antideficiency Act (31 U.S.C. 1341 and 1342). You also asked for our review of the comments made by AFOSI/JA concerning the subject report.

First, as a general matter, we agree with the AFOSI/JA position that state, local and federal law enforcement agencies all share a valid interest in the investigation and prosecution of crimes, irrespective of which level of government has actual legal jurisdiction over the crime. Accordingly, reciprocal agreements (formal and informal) between federal agencies such as the Air Force and state and local law enforcement agencies to provide assistance in such areas as forensic laboratory services are critical to investigating and prosecuting crimes.

Second, since the Air Force does not operate any forensic laboratories, it is impossible for it to violate the purpose statute, 31 U.S.C. 1301, or the Antideficiency Act, 31 U.S.C. 1341, by providing such lab services to state and local law enforcement agencies without charge.

On the other hand, the Air Force does sometimes request state or local law enforcement agencies to provide forensic lab services in support of Air Force crime solving efforts. The concern here is whether obtaining such lab services without paying the state or local government for them violates the prohibition against accepting voluntary services stated in 31 U.S.C. 1342. The broad purpose of section 1342 is to prevent the government from incurring financial obligations over and above those authorized by Congress. The statute prohibits the acceptance of services rendered in the hope that Congress will subsequently recognize a moral obligation to pay for the benefits conferred. See B-204326, July 26, 1982.

In B-204326, the Comptroller General stated:

Voluntary services have been defined as those which are not rendered pursuant to a prior contract, or under an advance agreement that they will be gratuitous. Therefore, voluntary services are likely to form the basis of future claims against the government.

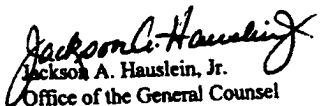
This prohibition against accepting voluntary services does not, however, preclude accepting gratuitous services which are provided pursuant to a formal or informal agreement wherein the parties understand there will be no charge. In an early decision, the Comptroller General distinguished voluntary services from gratuitous services as follows:

The voluntary service referred to in [31 U.S.C. § 1342] is not necessarily synonymous with gratuitous service, but contemplates service furnished on the initiative of the party rendering the same without request from, or agreement with, the United States therefor.

7 Comp. Gen. 810, 811 (1928).

Generally, there is a strong spirit of cooperation between the various law enforcement jurisdictions. As noted by AFOSI/JA in its memorandum to SAF/IGI, dated April 23, 1998, such cooperation is encouraged by statute. For example, section 377 of title 10, United States Code waives the Economy Act reimbursement provision where a DoD agency provides support to civilian law enforcement agencies "in the normal course of military training or operations" or "results in a benefit" to the providing DoD agency. When the situation is reversed and the state or local government is providing support to DoD agencies, the fundamental principles of reciprocity apply. Indeed, it is our view that the forensic services the Air Force receives from state and local law enforcement agencies are gratuitous, because there is an understanding between the parties that the services are furnished for the mutual benefit of the law enforcement agencies involved with no expectation of payment. Consequently, we concur with AFOSI/JA and find no violation of the 31 U.S.C. 1342 prohibition against accepting voluntary services or any other federal fiscal statute.

As stated above, in those instances where the Air Force is receiving forensic lab services without charges based on an informal agreement with a state or local law enforcement agency, there is no violation of 31 U.S.C. 1342. Nevertheless, we recommend that a written agreement with a clear statement that the services are rendered gratuitously with no expectation of future payment be obtained. This will preclude receiving a subsequent claim for such services due to a verbal misunderstanding concerning whether the services were gratuitous.


Jackson A. Hauslein, Jr.
Office of the General Counsel

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